IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH: JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 78/1997

LALLU RAM YADAV Vs. STATE OF RAJASTHAN & ORS.

Date: 04.10.2006.

HON'BLE MR. K.S. RATHORE, J.

Mr. Ashok Gaur for the petitioner.
Mr. B.S. Chhaba, Addl. GA for the State.
Mr. S.N. Kumawat for the respondent/s.

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Brief facts of the case are that the petitioner applied for the post of Lecturer in Mathematics subject being in the category of Other Backward Classes and his name finds place at S. No. 24 in the reserve list. Since 11 posts were advertised in the OBC category for appointment on the post of Lecturer and 11 appointments were given and the petitioner stood at S. No. 12 in this category. As per the petitioner, the determination of vacancies has not been correctly made by the respondents. As per order dated 26.02.94 issued by the of Department of Personnel, wherein roster points for direct recruitment have been provided, the Government has provided 21% reservation of vacancies in posts and service under the

State Government and the existing reservation roster has been revised.

The petitioner further submits that total 57 posts were advertised, out of which 10 were reserved for Scheduled Castes, 7 for Scheduled Tribes and 11 posts for O.B.C., whereas applying the ratio and roster system, the determination of vacancies with regard to OBC candidates should be 12 instead of 11. Thus, if the respondents would have correctly determined the vacancies for OBC candidates, the petitioner is eligible to be given appointment on the post of Lecturer.

Learned counsel for the petitioner placed reliance on the judgment rendered by the Hon'ble Supreme Court in the case of ***State of U.P. And Another Vs. Pawan Kumar Tiwari And Others, decided on 04.01.2005 and reported in (2005)2 SCC 10,*** wherein the Hon'ble Supreme Court has held that fraction if one-half or more should be treated as one and if less than one-half it should be ignored. The Hon'ble Supreme Court has further held that in case of reserved vacancies if conversion of one-half or more into one leads to the reserved vacancies exceeding 50% of the total vacancies, it would be unconstitutional and so has to be ignored.

Learned counsel for the petitioner further submits that as per the order dated 26.02.94, if vacancies are correctly determined for OBC category, it comes to 11.97 and it should be treated one and should be calculated 12. He also cited illustation Annexure-5, wherein determination of vacancies with regard to Hindi subject is correctly made.

Per contra learned counsel for the respondent RPSC submits that as per the provisions of the relevant rules and the running roster system, determination has been correctly made. He also referred scheme of running roster system. As per the scheme, determination with regard to OBC is correctly made in the instant case. Further the learned counsel for the RPSC submits that the petitioner was well aware of the advertisement, by which vacancies of 11 posts were determined for OBC candidates and knowing this fact the petitioner appeared in the examination and only when the petitioner was not successful to find place in the select list, preferred the present writ petition. As per the settled preposition of law, the petitioner is estopped from challenging the procedure and determination of vacancies, which was notified and the petitioner was well aware of it.

I have considered the rival submissions of the respective parties and carefully gone through the relevant provisions of scheme of running roster system and the judgment referred by the counsel for the petitioner.

On the basis of 100% running roster system, determination is made and the same is absolutely correct. Thus, the ratio decided by the Hon'ble Supreme Court in the aforementioned case of ***State of U.P. And Another Vs. Pawan Kumar Tiwari And Others (supra),*** is not applicable to the instant case in the facts and circumstances of the case and as the Hon'ble Supreme Court has categorically held that in case of reserved vacancies if conversion of one-half or more into one leads to the reserved vacancies exceeding 50% of the total vacancies, it would be unconstitutional and so has to be ignored. Thus, in case one vacancy as claimed by the petitioner is increased in the category of OBC, definitely reserved vacancies will exceed beyond 50% of the total vacancies.

In such circumstances, I find no merit in the writ petition.

Consequently, the writ petition fails being devoid of merit and the same is hereby dismissed.

(K.S. RATHORE),J.

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